

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 183

April 17, 1956

FOREIGN CORPORATION: EFFECTIVE DATE OF WITHDRAWAL

Syllabus:

A foreign corporation is not deemed to have withdrawn from California so as to be entitled to proration under Section 23332 until it has filed a certificate with the office of the Secretary of State which is acceptable to that office as a certificate of withdrawal, regardless of when the corporation may have been dissolved in the state of its incorporation.

X Corporation was incorporated under the laws of Nevada. The corporation completed dissolution proceedings in Nevada on February 14, 1955, but has never filed a certificate of withdrawal or a copy of its certificate of dissolution with the Secretary of State of California. The corporation ceased to do business in California prior to the time that it dissolved in its home state. It did not terminate its activities in California as a result of a reorganization as defined in Section 23251.

Advice has been requested as to whether X Corporation is entitled to proration under Section 23332 based upon the date that it dissolved in its own state. The above ruling is based on Section 23331.

Section 23331 provides that the effective date of withdrawal of a foreign corporation is the date on which a certificate of withdrawal is filed in the office of the Secretary of State. That date is the proper date to be used in prorating the tax under Section 23332.

The office of the Secretary of State has advised that if a foreign corporation submits a copy of the certificate of dissolution in its home state, under the authority of Section 6202 of the Corporation Code, they consider such filing essentially equivalent to fulfilling the requirements of Section 6700, (section which sets up the certificate of withdrawal procedure). Under such circumstances the corporation will be withdrawn as of the date the corporation files the certificate with the Secretary of State, and not as of the date of its dissolution. This Board will also accept such a filing as sufficient to constitute withdrawal but Section 23331 requires that there must be a filing with the Secretary of State and that the filing date be deemed the date of withdrawal.

X Corporation has filed neither a certificate of withdrawal nor a copy of its certificate of dissolution with the Secretary of State and therefore it is entitled to no proration of its tax for the taxable year 1955.